

Wanda J Osborne (“Osborne”) appeals her conviction in Posey Superior Court of Class C felony forgery. She raises one issue: whether the trial court abused its discretion in the admission of opinion testimony. We affirm.

Facts and Procedural History

On April 14, 2005, the Treasurer of the Posey County Humane Society wrote and mailed a check numbered 2473 in the amount of \$560 to Hawthorne Animal Clinic. When presented to Fifth Third Bank on April 18, 2005, the check was made payable to Osborne¹ in the amount of \$1580 and bore the signature “Elaine Hines,” who was not an officer or member of the Posey County Humane Society.

On May 19, 2005, Mount Vernon Police Officer Michael Collins (“Officer Collins”) responded to a call from Fifth Third Bank about the altered check. Officer Collins then proceeded to Osborne’s residence and questioned her about the check. Osborne told Officer Collins that she had received the check from the Posey County Humane Society in the mail,² that it was made payable to her, and that she had cashed it at the Peerless Too tavern. Tr. pp. 4-5, 11-12, 80-81.

The State charged Osborne with Class C felony forgery and two counts of Class D felony theft. A jury trial commenced on September 27, 2006. At trial, Osborne testified that she had cashed a check from her father at the tavern, that she talked to Officer Collins about it, but that they did not discuss the Posey County Humane Society. Tr. pp. 66, 68. The jury found Osborne guilty of Class C felony forgery. The trial court

¹ The check was made payable to “Wanda Seabeck.” Osborne testified at trial that her current name is Wanda Seabeck. Tr. p. 65.

² The check was mailed to the Hawthorne Animal Clinic at 903 East Fourth Street in Mount Vernon, but apparently was mistakenly delivered to Osborne’s residence at 908 West Fourth Street.

sentenced her to forty-eight months with eighteen months suspended. Osborne now appeals.

Discussion and Decision

We review the trial court's ruling on the admission or exclusion of evidence for an abuse of discretion. Guillen v. State, 829 N.E.2d 142, 145 (Ind. Ct. App. 2005), trans. denied (citing Noojin v. State, 730 N.E.2d 672, 676 (Ind. 2000)). We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Id. Osborne argues that the trial court abused its discretion when it admitted opinion testimony from Officer Collins about her state of mind when questioned about the check. Specifically, she argues that the officer's testimony that she was not confused about what check they were talking about is inadmissible under Indiana Evidence Rule 701 (2003).

Rule 701 provides that lay witnesses may testify in the form of an opinion if the testimony "is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." Evid. R. 701. The determination of whether a witness is qualified to give an opinion is within the trial court's discretion. Kent v. State, 675 N.E.2d 332, 338 (Ind. 1996).

Osborne objected to Officer Collins's rebuttal testimony that "there was no confusion" about what check she was answering questions about. Tr. p. 85. However, even assuming the admission of this testimony was error, such error is harmless. We will not reverse a conviction unless the trial court error is inconsistent with substantial justice or has affected a substantial right of the party. Smith v. State, 829 N.E.2d 64, 73 (Ind. Ct.

App. 2005). In determining whether error in the introduction of evidence affected an appellant's substantial rights, we assess the probable impact of the evidence on the jury.

Id.

Officer Collins testified, without objection, during the State's case-in-chief that he asked Osborne if she cashed or knew anything about the check and that he specifically referred to the Posey County Humane Society. Tr. pp. 5, 11. He then testified that Osborne told him that she received the check in the mail, that it had been made out to her, and that she cashed it at the Peerless Too. Tr. pp. 5; 80-81. In addition, Officer Collins testified that he asked Osborne if she was aware of a check from the Posey County Humane Society made out to the Hawthorne Animal Clinic. Tr. p. 80. In light of this properly admitted evidence, any error in the admission of Officer Collins's opinion on Osborne's lack of confusion was harmless.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.